**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**O.O.C.J.**

**CHAMBER SUMMONS NO. 1685 OF 2003**
**IN**
**EXECUTION APPLICATION NO.74 OF 2001**
**IN**
**AWARD NO. 63 OF 1999**

Atul Kothare .... Petitioner
vs.
Upendra Majhithia .... Respondent
AND
Madhubal I. Navalkars .... Applicant

W I T H

**CHAMBER SUMMONS NO. 705 OF 2004**
**IN**
**EXECUTION APPLICATION NO.74 OF 2001**
**IN**
**AWARD NO. 63 OF 1999**

Atul Kothare .... Petitioner
vs.
Upendra Majhithia .... Respondent
AND
Madhubal I. Navalkars .... Applicant

Ms. Alpana Ghone i/b. Jyoti Shah for the applicants.

Ms. E.P. Bharucha with Ms. Nandu Menon for the applicant in ch/s.1685 of 2003.

Ms. Maya Salem i/b. Madhukar Munim for respondent no.3 for Mohini Seth in Ch/s.1685 of 2003.

**CORAM: S.U. KAMDAR, J.**

**DATE : 26TH APRIL, 2005.**

**P.C.:.**

1. Both the aforesaid chamber summons are taken out in execution application No.74 of 2001. The plaintiff decree holder has put the decree in execution which consists of two parts. First for a recovery of sum of Rs.12,52,183.07/- with further interest at the rate of 12%. The second part of the decree pertains to Plot No.21(II), MIDC, Street-9, Mahakali Caves, Andheri (East), Mumbai-93 alongwith the building standing thereon. The second part of the decree provides for taking possession of the aforesaid property which is not the subject matter of the aforesaid two chamber summons. In so far as the first part of the decree is concerned the judgment debtor makes a statement that he will deposit a sum of Rs.18,00,000/- towards the decreetal amount as decreetal amount due and payable by the judgment debtor to the respondent decree holder. The aforesaid amount will be deposited within a period

of four weeks from today. On such deposit being made the Execution Application No.74 of 2001 which only pertains to the execution of the first part of decree stands satisfied and the same will stand dismissed. If the amount is not so deposited the respondent decree holder will be at liberty to execute the decree against all the four properties mentioned in the execution application to the extent of the share of the judgment debtor in the said immovable properties. It is an admitted position amongst the parties that the share of the petitioner/judgment debtor is one-sixth inrespect of the said immovable properties.

2. If the amount is so deposited then the said amount to remain deposited for a period of eight weeks from the date of such deposit and in the mean time the petitioner who is the judgment debtor will be entitled to adopt appropriate legal proceedings in Suit No.224 of 1993 which has been filed by the petitioner in this court claiming certain amounts from the respondents herein. The said deposit shall abide by the orders passed in the proceedings initiated by the petitioner/judgment debtor in the said suit No.224 of

1993. In an event of failure on the part of the petitioner to initiate any such proceedings within the aforesaid period of time,the respondent decree will be entitled to withdraw the said amount towards the satisfaction of the decreetal claim without any further orders from this court.

3. Both the aforesaid chamber summons disposed off accordingly. Parties are directed to maintain complete status-quo for a period of four weeks which is the time given to the petitioner for the purpose of depositing the aforesaid decreetal amount. The respondent decree holder as well as applicants in both the chamber summons has no objection to the present order.

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